

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants

The Honorable Liam O'Grady

Criminal No. 1:12-CR-3

**MOTION OF SPECIALLY APPEARING DEFENDANT AND INTERESTED PARTY
MEGAUPLOAD LIMITED FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF
REGARDING RULE 41(G) HEARING AND A MOTION TO UNSEAL SEARCH
WARRANT MATERIALS**

Specially appearing Defendant Megaupload Limited (“Megaupload”) respectfully moves this Court for leave to file (1) a Supplemental Brief Regarding Rule 41(g) Hearing and (2) a Motion to Unseal Search Warrant Materials. In the event that the requested leave is granted, Movant respectfully requests that the proposed briefs, copies of which are attached hereto, be accepted as filed *nunc pro tunc* as of this date. In support of its motion, Megaupload states:

1. On May 25, 2012, interested party Kyle Goodwin filed his Motion for Return of Property, seeking the return of data stored on Megaupload’s servers, pursuant to Federal Rule of Criminal Procedure 41(g). (Dkt. 90.) The Government opposed that motion on June 8, 2012. (Dkt. 99.) Following briefing and oral argument on the motion, the Court issued an Order on October 2, 2012, indicating that “it is unable to reach a conclusion as to this matter without an evidentiary hearing.” (See Dkt. 126.) The Court noted that the hearing “shall be limited to argument and evidence concerning the applicability of Federal Rule of Criminal

Procedure 41(g)” and ordered Mr. Goodwin and the Government to file briefs regarding the suggested format and breadth of this hearing. (*See id.*)

2. On October 30, 2012, the undersigned filed a motion to enter a special and limited appearance on behalf of Megaupload for the purpose of filing a brief offering input into the suggested format and breadth of the Rule 41(g) hearing sought by Mr. Goodwin, and attached a proposed brief. The Court granted that motion on November 20, 2012 and Megaupload’s Brief Regarding Rule 41(g) Hearing was deemed filed *nunc pro tunc* as of October 30, 2012.
3. Earlier, on October 22, 2012, Mr. Goodwin had filed a motion to unseal search warrant materials. (Dkt. 131.) The Court granted that motion in part on November 15, 2012. (Dkt. 145.)
4. Now having the benefit of those search warrant materials, Megaupload respectfully suggests that certain materials related to the Government’s June 24, 2010 search warrant, issued in Case No. 1:10-SW-320, go directly to the scope and propriety of the Government’s search and seizure of the Carpathia servers, and would be relevant and properly heard at the Rule 41(g) hearing to be scheduled. The relevance of the June 24, 2010 warrant materials is set forth in more detail in the accompanying [Proposed] Supplemental Brief of Specially Appearing Defendant and Interested Party Megaupload Limited Regarding Rule 41(g) Hearing.
5. The June 24, 2010 warrant materials are presently subject to a sealing order signed by Magistrate Judge Ivan D. Davis in Case No. 1:10-SW-320, dated June

24, 2010. Unsealing of the June 24, 2010 warrant materials is necessary, given their relevance to the Rule 41(g) hearing to be scheduled.

CONCLUSION

For the foregoing reasons, Movant respectfully requests that the Court grant specially appearing defendant Megaupload Limited leave to file the aforementioned briefs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2013, the foregoing **MOTION OF SPECIALLY APPEARING DEFENDANT AND INTERESTED PARTY MEGAUPLOAD LIMITED FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF REGARDING RULE 41(G) HEARING AND A MOTION TO UNSEAL SEARCH WARRANT MATERIALS** was filed and served electronically by the Court's CM/ECF system upon all registered users.

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